

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 03-006-19-1-5-00943-19  
**Petitioner:** Joyce Thayer-Sword  
**Respondent:** Bartholomew County Assessor  
**Parcel:** 03-06-21-000-001.401-006  
**Assessment Year:** 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Ms. Thayer-Sword contested the assessment for her property at 5030 East 600 North in Columbus. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) valued the property at \$192,700 for 2019. She timely appealed to the Board.
2. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), heard the case telephonically on September 17, 2020. Neither she nor the Board inspected the property.
3. Milo Smith, Certified Tax Representative, represented Ms. Thayer-Sword. Mr. Smith, Bartholomew County Assessor Ginny Whipple, and Data Analyst Dean Layman, were sworn as witnesses.
4. The parties submitted the following exhibits<sup>1</sup>:

Petitioner’s Ex. 1:	2019 Property Record Card-Subject
Petitioner’s Ex. 2:	2019 Property Record Card-Subject
Petitioner’s Ex. 3:	Form 115
Petitioner’s Ex. 4:	Narrative
Petitioner’s Ex. 5:	Ind. Code 6-1.1-15-17.2
Petitioner’s Ex. 6:	Neighborhood Factors
Petitioner’s Ex. 7:	Residential Land Values
Respondent’s Ex. A:	Ginny Whipple Resume
Respondent’s Ex. B:	Statement of Professionalism
Respondent’s Ex. C:	2018 Property Record Card-Subject
Respondent’s Ex. D:	2019 Property Record Card-Subject
Respondent’s Ex. E:	Aerial Photo-Subject

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<sup>1</sup> The ALJ labeled the Petitioner’s exhibits to simplify references.

5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices, and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

### **OBJECTIONS**

6. The Assessor objected to all of the Petitioner's exhibits, contending that they were provided to her after the Board's deadline for small claims rules. She testified that she received the evidence on September 10, at 2:41 p.m., instead of by 2:30 p.m., not a full five business days in advance of the September 17 hearing set for 2:30 p.m. The Board's rules do not set a specific hour in which evidence is to be exchanged. 52 IAC 4-8-2 also provides that evidence in a small claims hearing must be exchanged if requested by the other party not less than 10 business days before the hearing. The Assessor did not assert that she made such a request. Thus, we overrule the objection and admit the exhibits.

### **BURDEN OF PROOF**

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2 (b) and (d).
8. The subject property's 2018 assessment was \$183,800. For 2019, the original assessment was \$193,500, but the PTABOA lowered the assessment to \$192,700. Ms. Thayer-Sword argued that the Board should use the original 2019 assessed value of \$193,500 to determine the burden of proof on the grounds that it was not the intent of the legislature to allow the PTABOA to lower an assessment below the 5% threshold and thus negate the burden shifting provisions.
9. Ind. Code § 6-1.1-15-17.2 (a) in pertinent part states:

Except as provided in subsection (d), this section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year. In calculating the change in the assessment for purposes of this section, the assessment to be used for the prior tax year is the original assessment for that prior tax year or, if applicable, the assessment for that prior tax year: (1) as last corrected by an assessing official; (2) as stipulated or settled by the taxpayer and the assessing official; or (3) as determined by the reviewing authority.

The “reviewing authority” in this case was the PTABOA. It issued a final value of \$192,700 for 2019. This is the assessed value under appeal by statute. The Board does not have authority to construe a statute differently when the language is unambiguous, which is the case here. *Aboite v. State Board of Tax Commissioners*, 762 NE 2d. 254 (Ind. Tax Court 2001). Reviewing bodies and courts may only consider legislative intent when the meaning of a statute is unclear. Thus, we are obligated to use the PTABOA’s value when determining the burden of proof. For that reason, Ms. Thayer-Sword has the burden of proof because the assessment increased by less than 5% from 2018 to 2019.<sup>2</sup>

### SUMMARY OF CONTENTIONS

10. **Ms. Thayer-Sword’s:**

- a. Ms. Thayer-Sword argued that the subject property’s assessment is too high because sales are sluggish and therefore, the Assessor should not have used a neighborhood factor. She asked the Board revert the assessment to the 2018 assessed value of \$183, 800. *Smith testimony; Pet’r. Exs. 6-7.*

11. **The Assessor’s:**

- a. The Assessor argued that Thayer-Sword provided no evidence in support of a different market value-in-use as required by Indiana law. The burden of proof remained on the taxpayer and she did not make a prima facie case. *Whipple testimony.*

### ANALYSIS

12. Ms. Thayer-Sword failed to make a prima facie case for any change in the assessment. We reached this decision for the following reasons:

- a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean “fair market value” or “the value of the property to the user.” Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

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<sup>2</sup> We note that Mr. Smith claimed special knowledge of the Legislature’s intent as the legislative author of the original burden shifting provisions. Testimony from an author cannot amend the meaning of a statute.

- b. In an assessment appeal, a USPAP- market-value-in-use appraisal (Uniform Standards of Professional Appraisal Practice) is often the best evidence of a property’s true tax value. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer any other evidence that is relevant to a property’s true tax value, such as actual construction costs, sales information for the property under appeal, and sales or assessment information for comparable properties. MANUAL at 3; see also *Eckerling*, 841 N.E. at 674; Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property tax appeals).
  
- c. In this appeal, Ms. Thayer-Sword briefly attacked the Assessor’s methodology, arguing that sales in the area were sluggish and that therefore, she should not have applied any neighborhood factor. She did not offer any evidence in support of those contentions so we will not analyze these contentions further. She did not explain or discuss the one exhibit she provided which may have been related to her argument, a list of neighborhood factors from 2018 and 2019. Conclusory statements are not probative and provide no basis upon which the Board may base a decision. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
  
- d. Because Ms. Thayer-Sword failed to meet her burden of proof by providing any reliable market-based evidence of value, or demonstrating that any other relief was warranted, we find for the Assessor.

**FINAL DETERMINATION**

- 13. The Board finds for the Assessor and orders no change to the subject property’s 2019 assessment.

ISSUED: December 15, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at<<http://www.in.gov/judiciary/rules/tax/index.html>>.